

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

PAUL N. WARE and

FINANCIAL SYSTEMS INNOVATION,  
LLC

Plaintiffs,

v.

ABERCROMBIE & FITCH STORES, INC.,  
ET AL,

Defendants.

Case No. 4:07-CV-00122 BBM

**JURY TRIAL DEMANDED**

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**DEFENDANT FEDEX KINKO’S OFFICE AND PRINT SERVICES,  
INC.’S ANSWER AND COUNTERCLAIM**

Defendant FedEx Kinko’s Office and Print Services, Inc. (“FedEx”) files this answer to Plaintiffs Paul N. Ware (“Ware”) and Financial Systems Innovation, L.L.C. (“Financial Systems”) (collectively “Plaintiffs”) Original Complaint (“Complaint”).

**I.**

**THE PARTIES**

1. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1, and therefore denies them.

2. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and therefore denies them.

3. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3, and therefore denies them.

4. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and therefore denies them.

5. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and therefore denies them.

6. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6, and therefore denies them.

7. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, and therefore denies them.

8. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8, and therefore denies them.

9. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9, and therefore denies them.

10. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and therefore denies them.

11. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and therefore denies them.

12. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, and therefore denies them.

13. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13, and therefore denies them.

14. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14, and therefore denies them.

15. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and therefore denies them.

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41. Admitted.

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108. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 108, and therefore denies them.

109. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 109, and therefore denies them.

110. FedEx lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 110, and therefore denies them.

## **II.**

### **JURISDICTION AND VENUE**

111. FedEx admits that the Complaint purports to state an action for infringement of a United States patent. FedEx admits that this Court has subject

matter jurisdiction, pursuant to 35 U.S.C. § 1338(a), to hear patent-infringement actions. FedEx denies all other allegations of Paragraph 111.

112. The allegations of Paragraph No. 112 are directed to all Defendants in the case, not solely to FedEx. To the extent that the allegations of Paragraph No. 112 are directed against FedEx's co-Defendants, FedEx lacks knowledge or information sufficient to form a belief as to their truth and therefore denies them. To the extent that the allegations are directed against FedEx, FedEx admits that it has transacted business in the Northern District of Georgia. FedEx further admits that, for the purposes of this litigation, venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) and under 28 U.S.C. § 1400(b). FedEx denies all other allegations of Paragraph 112.

### **III.**

#### **CAUSE OF ACTION FOR PATENT INFRINGEMENT**

113. FedEx admits that a copy of what purports to be U.S. Patent No. 4,707, 592 ("the '592 patent") is attached as exhibit A to the complaint. FedEx denies all other allegations of paragraph 113.

114. To the extent that the allegations of Paragraph No. 114 are directed against FedEx's co-Defendants, FedEx lacks knowledge or information sufficient to form a belief as to their truth and therefore denies them. To the extent that the

allegations are directed against FedEx, FedEx denies the allegations of paragraph 114.

115. To the extent that the allegations of Paragraph No. 115 are directed against FedEx co-Defendants, FedEx lacks knowledge or information sufficient to form a belief as to their truth and therefore denies them. FedEx admits that it has more than one regular places of business in the Northern District of Georgia. FedEx denies all other allegations of paragraph 115.

116. To the extent that the allegations of Paragraph No. 116 are directed against FedEx's co-Defendants, FedEx lacks knowledge or information sufficient to form a belief as to their truth and therefore denies them. To the extent that the allegations are directed against FedEx, FedEx denies the allegations of paragraph 116.

117. To the extent that the allegations of Paragraph No. 117 are directed against FedEx's co-Defendants, FedEx lacks knowledge or information sufficient to form a belief as to their truth and therefore denies them. To the extent that the allegations are directed against FedEx, FedEx denies the allegations of paragraph 117.

**IV.**

**JURY DEMAND**

118. FedEx does not object to Plaintiffs' request for a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

**V.**

**PRAYER FOR RELIEF**

119. FedEx denies that Plaintiffs are entitled to any of the relief prayed for in their Complaint.

**AFFIRMATIVE DEFENSES**

For its affirmative defenses, FedEx alleges that:

***First Affirmative Defense***

120. The asserted claims of the '592 patent are invalid for failure to meet the requirements of one or more sections of Title 35, United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, and 112.

***Second Affirmative Defense***

121. FedEx has not infringed, actively induced others to infringe, or contributed to the infringement of any claim of any of the '592 patent, either literally or under the doctrine of equivalents.

***Third Affirmative Defense***

122. FedEx has not intentionally, deliberately, or willfully infringed any claim of the '592 patent.

***Fourth Affirmative Defense***

123. Plaintiffs' claims under the '592 patent are barred by estoppel, waiver, and/or acquiescence. The prior art, the prosecution history of the application that issued as the '592 patent, the prosecution history of reexaminations of the '592, and various statements and arguments made by Plaintiffs and affiliated parties regarding the '592 patent preclude Plaintiffs from asserting a construction of any claim of the '592 patent that would cover any product or method of FedEx.

***Fifth Affirmative Defense***

124. Laches bar Plaintiffs' claims for recovery for the alleged infringement of the '592 patent.

***Sixth Affirmative Defense***

125. Plaintiffs, their predecessors-in-interest, and licensees have failed to comply with the marking and notice requirements of 35 U.S.C. § 287.

***Seventh Affirmative Defense***

126. Plaintiffs' claims under the '592 patent are barred because Plaintiffs have engaged in patent misuse.



***Eighth Affirmative Defense***

127. Plaintiff's claims under the '592 patent are barred under the doctrine of intervening rights.

***Ninth Affirmative Defense***

128. Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted.

***Tenth Affirmative Defense***

129. Plaintiffs' claims should be dismissed for failure to identify any product and/or system of FedEx that allegedly infringes the '592 patent.

FedEx reserves the right to assert additional affirmative defenses and counterclaims after further investigation, including defenses related to validity and enforceability.

**COUNTERCLAIM**

FedEx asserts the following counterclaim:

**THE PARTIES**

130. FedEx is a corporation organized under the laws of the state of Delaware, with a principal place of business in Dallas, Texas.

131. Ware is a citizen of the State of Georgia, residing at 1090 Barker Road, Rome, Georgia 30165.

132. Financial Systems is a limited liability company organized and existing under the laws of the State of Illinois, with its principal place of business at 500 Newport Center Drive, 7th Floor, Newport Beach, CA 92660.

### **JURISDICTION AND VENUE**

133. These counterclaims arise under the Federal Declaratory Judgment Act and the Patent Laws of the United States, more particularly, under 28 U.S.C. §§ 2201 and 2202, and 35 U.S.C. §§ 100 et seq., respectively. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1338 and 2201.

134. There is an actual controversy between FedEx and Plaintiffs regarding the validity, enforceability, and infringement of the '592 patent, as evidenced by, for example, Plaintiffs assertions that FedEx infringes the '592 patent and FedEx's denial of those assertions.

135. Venue in this judicial district for the following counterclaim of FedEx is proper because Plaintiffs have consented to this venue by asserting and filing claims of patent infringement against FedEx. Moreover, Ware resides in Georgia and in this judicial district for purposes of 28 U.S.C. § 1391.

**COUNTERCLAIM FOR DECLARATORY JUDGMENT**

136. The asserted claims of the '592 patent are invalid for failure to meet the requirements of one or more sections of Title 35, United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, and 112.

137. FedEx has not infringed, actively induced others to infringe, or contributed to the infringement of any claim of any of the '592 patent, either literally or under the doctrine of equivalents.

138. FedEx has not intentionally, deliberately, or willfully infringed any claim of the '592 patent.

139. Plaintiffs' claims under the '592 patent are barred by estoppel, waiver, and/or acquiescence. The prior art, the prosecution history of the application that issued as the '592 patent, the reexamination of the '592, and various statements and arguments made regarding the claims of the '592 patent preclude Plaintiffs from asserting a construction of any claim of the '592 patent that would cover any product or methods of FedEx.

140. Laches bar Plaintiffs' claims for recovery for any alleged infringement of the '592 patent by FedEx.

141. Plaintiffs, their predecessors-in-interest, and licensees have failed to comply with the marking and notice requirements of 35 U.S.C. § 287.

142. Plaintiffs' claims under the Asserted Patents are barred because Plaintiffs have engaged in patent misuse.

### **DEMAND FOR JURY TRIAL**

FedEx requests a trial by jury of all issues in this action.

### **PRAYER FOR RELIEF**

WHEREFORE, FedEx, prays that this Court enter judgment against Plaintiffs:

- (a) Dismissing Plaintiffs' complaint with prejudice;
- (b) Enjoining Plaintiffs from asserting the '592 patent against FedEx;
- (c) Declaring that the claims of the '592 patent are invalid;
- (d) Declaring that the claims of the '592 patent are not infringed by FedEx;
- (e) Declaring that this is an exceptional case as defined by 35 U.S.C. § 285, and awarding FedEx its attorneys fees and full costs of suit; and
- (f) Awarding FedEx such other and further relief as this Court deems just and appropriate.

November 16, 2007

Respectfully submitted,

s/Virginia L. Carron

Virginia L. Carron

Ga. Bar No. 112,770

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Atlanta, Georgia 30308

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Attorney for Defendant FedEx Kinko's  
Office and Print Services, Inc.

### **CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2007, I electronically filed the foregoing document with the Clerk of the United States District Court for the Northern District of Georgia, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Virginia L. Carron.  
Virginia L. Carron